IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 480 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

GUMANBHAI BHANABHAI HARIJAN

Appearance:

1. Criminal Appeal No. 480 of 2001

MR PANDYA, ADDL.PUBLIC PROSECUTOR for Petitioner No. 1

CORAM : MR.JUSTICE A.L.DAVE
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 26/11/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

The State has preferred this appeal against judgement and order rendered by Special Judge, Bharuch in Special Corruption Case No. 2 of 1995 on March 20, 2001, acquitting respondents - original accused of offences under Sections 7, 12, 13(1)(gh) read with Section 13(2) of the Prevention of Corruption Act.

2. The brief facts of the case are that one Jagdishbhai Jerambhai Vankar had applied for a loan for purchase of xerox machine under some Government Scheme for educated unemployed youth. The application was made to the District Industries Centre, Bharuch with relevant documents. The respondent No.1 was working with Rajpipla Division. Jagdishbhai Vankar therefore met him and it is alleged that accused No.1 told him that his work could be done but he has to `understand'. The complainant could not follow the signals. He again went to the office on July 25, 1998 along with his brother Hasmukhbhai and met respondent No.1 and at that point of time respondent No.1 made it clear to him that complainant will have to pay Rs. 500/- for sanction of the loan. The complainant therefore approached the ACB office and ultimately a trap was arranged.

3. According to the prosecution case, at the time of the trap two panchas accompanied the raiding party. The complainant carried currency notes treated with anthracene powder and ultimately the same notes were accepted by the accused persons by it placed into the drawer of the table of respondent No.2 Punambhai. Again panchnama was drawn. Having found sufficient evidence, charge-sheet was filed. The accused pleaded not guilty to the charges and claimed to be tried. Learned Special Judge, after considering the evidence came to the conclusion that the evidence led by the prosecution case is not satisfactory and trustworthy and it is contradictory and doubtful. He therefore recorded acquittal by not accepting the evidence. Aggrieved by this decision the State has preferred this appeal.

4. We have heard learned Additional Public Prosecutor Mr. Pandya. We have gone through the record and proceedings, which is before us. We have also gone through the judgement of the trial Court. Following glaring features emerge out of the evidence:-

1. The evidence regarding demand of bribe is doubtful;

2. The evidence led by the prosecution regarding acceptance of the bride by getting the currency note put into the drawer becomes doubtful as two versions are emerging, namely that the currency notes were placed in to the drawer of the table of accused No.1, whereas the panchnama states that they were placed into the drawer of the table of accused No.2 Punambhai;

3. There is evidence that accused No.1 at that time had left the table for few times. The chances of planting therefore cannot be ruled out;

4. The entire raid proceedings become doubtful for the reason that the prosecution evidence itself negatives the other evidence. As per the prosecution case, currency notes were placed into the drawer after folding it into another paper. It has also come on record that accused No.1 had not touched the currency notes till the officers of the raiding party arrived. He did not touch the note even thereafter. Despite this, it is the case of the prosecution that finger tips carried stains of anthracene powder. This could not have happened if the earlier version is correct.

It is therefore a matter of doubt whether in fact stains of anthracene powder were found on finger tips of accused No.1 or not and if that is so, whether the incident occurred in the manner in which it is stated by the witnesses, in which event it can be said that the witnesses are not coming out with the correct version.

Assuming for a moment that the notes treated with anthracene powder was handled by accused, there should have been marks of anthracene powder on fingers and thumb of both hands, which are absent.

The learned trial Judge has taken into consideration all these aspects while recording acquittal. Even we, while going through the evidence, find that the above facts are correct. Therefore we are in full agreement with the reasoning adopted and conclusion arrived at by the learned Special Judge. We do not find any reason to interfere with the judgement and order of acquittal. Appeal therefore must fail.

Same is therefore dismissed.

(A.L.Dave, J.) (Akshay H. Mehta, J.)

*/Mohandas